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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/862,881	08/09/2001	Craig M. Herzinger		8860

7590 08/11/2004

JAMES D. WELCH  
10328 PINEHURST AVE.  
OMAHA, NE 68124

EXAMINER
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MATHEWS, ALAN A

ART UNIT	PAPER NUMBER
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2851

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/862,881

**Applicant(s)**

HERZINGER ET AL.

**Examiner**

Alan A. Mathews

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-9, 12-15, 18-21, 27-38, 44, 47-49 and 51-54 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 24-26, 39-43, 45, 46, and 50 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 16, 17, 22, 23 and 39-41 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 10, 11, 16, 17, 22, 23, 39, 40, and 41 are objected to because of the following informalities:

In claims 10, 11, 16, 17, 22, 23 there are no proper antecedent basis in the claims for the expression “the multiple element detector system”, since the term “multiple element” did not appear in the respective independent claims 9, 15, and 21. If Applicant canceled the words “multiple element” on line 4 of each of claims 10, 11, 16, 17, 22, 23, the objection to these claims will be withdrawn. In claims 39, 40 and 41, there is no proper antecedent basis for “the precision of acquired spectrophotometer intensity ratio”, since the term “spectrophotometer” did not appear in the parent claims 1 and 2. If Applicant canceled the word “spectrophotometer” on line 2 of each of claims 39, 40, and 41, the objection to these claims will be withdrawn. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

1. Claims 1, 2, 24-26, 39-43, 45, 46, and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

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matter which applicant regards as the invention. In claim 1, line 12, “that that” should apparent be “than that”. In claim 1, line 13, “said detector” is ambiguous, since a detector was recited in paragraph a) and a detector was recited in paragraph b) (which may or may not be the same detector as in paragraph a). Which detector does “said detector” on line 13 of claim 1 refer to? In claim 2, line 16, after “performing”, Applicant needs to insert the words---the following---, in order to clarify that Applicant is referring to steps recited later in the claim. With respect to claim 24, the amendment to include the term “optionally” at the very end of the claim after the period is confusing. The term “optionally” appears to serve no purpose and may be just a typo.

***Allowable Subject Matter***

2. Claims 3-9, 12-15, 18-21, 27-38, 44, 47-49, and 51-54 are allowed. Claims 10, 11, 16, 17, and 23 would be allowed subject to correcting the objections recited above. Claims 22, 39, 40, and 41 would be allowed subject to correcting the objections recited above and subject to correcting the 35 U.S.C. 112, 2nd paragraph, rejections of the parent claims. Claims 1, 2, 24-26, 42, 43, 45, 46, and 50 would be allowable if independent claims 1, 2, and 24 were rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan A. Mathews whose telephone number is (571) 272-2123. The examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan A. Mathews  
Primary Examiner  
Art Unit 2851

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